

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

OHIO CASUALTY INSURANCE COMPANY, )  
  )  
Plaintiff,                            )  
  )  
v.                                     ) Civil Action No. 3:06-cv-977-MEF  
  )  
MANIFOLD CONSTRUCTION, LLC, et al., )  
  )  
Defendants.                         )

**MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO STAY ALL  
PROCEEDINGS OR, IN THE SECOND ALTERNATIVE, MOTION FOR  
PROTECTIVE ORDER OR, IN THE THIRD ALTERNATIVE, MOTION FOR  
DISCOVERY CONFERENCE**

COME NOW the Defendants, Whittelsey Properties, Inc. and C.S. Whittelsey, IV (collectively referred to herein sometimes as "Whittelsey"), and move this Honorable Court to dismiss the present case or, in the alternative, to stay all proceedings in the present case placing it on the administrative docket until completion of mediation or, in the second alternative, issue a protective order to suspend discovery until after the mediation of the underlying state court action or, in the third alternative, set a discovery conference so that various issues raised by Plaintiff may be properly addressed, and as grounds therefore, states as follows:

1. On the 31<sup>st</sup> day of October, 2006, Plaintiff, Ohio Casualty Insurance Company (hereinafter "Ohio Casualty"), filed its complaint for declaratory judgment to determine the rights and obligations of Ohio Casualty under a policy of insurance it issued to Manifold Construction, LLC and Jack Manifold, co-defendants in the present case.
2. On the 4<sup>th</sup> day of December, 2006, Whittelsey accepted service of Ohio Casualty's complaint.

3. On the 4<sup>th</sup> day of December, 2006, Whittelsey filed their motion to dismiss Plaintiff's complaint and brief in support thereof. (Docs. #10 and #11).

4. On the 12<sup>th</sup> day of July, 2007, this Honorable Court denied Whittelsey's motion to dismiss. (Doc. #21).

5. On the 25<sup>th</sup> day of July, 2007, Whittelsey filed their answer to Plaintiff's complaint. (Doc. #23). On the same day, Whittelsey served Plaintiff with requests for production.

6. On or about the 27<sup>th</sup> day of July, Plaintiff served all Defendants with interrogatories and requests for production.

7. On the 28<sup>th</sup> day of August, 2007, Whittelsey responded to Plaintiff's discovery by asserting numerous objections, and directing Plaintiff to the documents requested.

8. On the 28<sup>th</sup> day of August, 2007, Plaintiff filed its motion for extension of time to respond to Whittelsey's discovery requests. (Doc. #31). In support of its motion, Plaintiff alleged Whittelsey's discovery requests were overly broad and unduly burdensome; however, Whittelsey's request is limited to any and all documents associated with the underlying state court action. (See Exhibit A to Doc. #31).

9. Late in the afternoon of August 28, 2007, four days after responses were due, Whittelsey received Plaintiff's responses to Whittelsey's discovery requests. Plaintiff failed to produce any documents citing the pending underlying state court action as grounds for it objection.

10. In Whittelsey's motion to dismiss and brief in support of said motion, Whittelsey cited *Ameritas Variable Life Ins. Co. v. Roach*, 411 F.3d 1328 (11th Cir. 2005). In *Ameritas*, the Court adopted several factors to be considered by the district court in determining whether to

abstain from exercising jurisdiction over state-law claims in the face of parallel litigation in the state courts. This Honorable Court chose not to abstain from exercising jurisdiction in the present case, and now Plaintiff is seeking to hide behind the state court action to avoid producing documents in response to discovery in the present case.

11. Whittelsey has attempted to resolve this discovery dispute without the assistance of the Court.

12. The parties will engage in mediation on the 2<sup>nd</sup> day of October, 2007. The scope of said mediation will be global covering the present case and pending state cases.

13. If Plaintiff is not willing to produce necessary documents while the state court action is pending, then Whittelsey would request this Honorable Court to reconsider the factors enumerated in *Ameritas* and dismiss the present case and allow the pending state court actions to proceed to conclusion or, in the alternative, stay all proceedings in the present case placing it on the administrative docket until completion of mediation or, in the second alternative, issue a protective order to suspend discovery until after the mediation of the underlying state court action or, in the third alternative set a discovery conference so that various issues raised by Plaintiff may be properly addressed.

WHEREFORE, Whittelsey prays this Honorable Court will take one of four actions:

(1) Dismiss the present case and allow the pending state court actions to proceed to conclusion;

(2) Stay all proceedings in the present case placing it on the administrative docket until completion of mediation of the underlying state court action;

(3) Issue a protective order to suspend discovery until after the mediation of the underlying state court action; or

(4) Set a discovery conference so that various issues raised by Plaintiff's objections may be properly addressed.

Respectfully submitted this the 10<sup>th</sup> day of September, 2007.

WHITTELSEY, WHITTELSEY & POOLE, P.C.

/s/ Davis B. Whittelsey

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document on the parties listed below electronically or by placing a copy of the same in the United States mail, postage prepaid, to their correct address on this the 10<sup>th</sup> day of September, 2007.

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/s/ Davis B. Whittelsey

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